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6 PINOLEVILLE POMO NATION et al.

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 PINOLEVILLE POMO NATION,
11 PINOLEVILLE POMO NATION
12 ENVIRONMENTAL ASSOCIATION AND
LEONA WILLIAMS,

13 Plaintiffs,

14
15 v.

Case No.: C 07 2648

DECLARATION OF GEORGE O.
PROVENCHER IN SUPPORT
OF PLAINTIFFS REPLY TO
HUNT OPPOSITION BRIEF

16 UKIAH AUTO DISMANTLERS, WAYNE
17 HUNT ISABEL LEWRIGHT, WARRIOR
INDUSTRIES, INC., RICHARD MAYFIELD,
18 ROSS JUNIOR MAYFIELD, PAULA
MAYFIELD, KENNETH HUNT, U.S.
19 ALCHEMY CORPORATION AND DOES 1-
20 50, INCLUSIVE,

21 Defendants.
22
23 _____ /

Date: 06/25/08
Time: 1:30 P.M.
Dept: Courtroom C, 15th Floor
Judge: Susan Illston

24
25 My name is George O. Provencher. I have personal knowledge of the facts stated herein,
26 unless expressly alleged on information and belief, and, if called as a witness, I could testify
27 competently thereto.
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1. Mr. Hunt's statement that he "retained the services of NEST Environmental Services, Inc., which is a firm which specializes in providing environmental services to the auto recycling industry," is an admission that he failed to hire a licensed geological engineer or civil engineer, licensed by the California State Licensing Board, as required by the Abatement Order issued by the Regional Water Quality Control Board.

2. Mr. Hunt's statement that "on June 29, 2006, the compliance with the short-Term abatement measures was truthfully reported the State Board," is false and misleading. The facts are that this correspondence, referred to in his declaration as "Exhibit 2", a letter from Fredrick Martin of NEST Environmental Services, documented the submittal of an abatement plan that actually was a revised version of an earlier submittal of a plan to bring Ukiah Auto Dismantlers into compliance, and that there was an earlier letter, dated June 16, 2006 from Fredrick Martin of NEST Environmental Services to Mr. Richard Azevedo of The Northern California Water Quality control Board (ref. Preliminary Disclosure Document #0046), wherein he acknowledged the Board's request for a revised plan. It is clear at this point that Ukiah Auto Dismantlers was neither meeting the requirements of the abatement order, nor were they in compliance.

3. Mr. Hunt's statement that, "A further truthful report as to the status of compliance was forwarded on October 14, 2006, a true and correct copy of which is attached hereto as "Exhibit 3 and incorporated herein by this reference," is also false and misleading in that the letter reports an attempt at sampling and testing for Oil and Gas and discusses a process recommended by the laboratory for testing for Total Petroleum Hydrocarbons (TPH). There is no report in this letter as to the status of UAD's compliance with the Abatement Order or any plan submitted to the Regional Water Quality Control Board mentioned in this letter. The exhibit omits the attachment, which is the "Sample Summary for UAD", dated September 11, 2006 (UAD Pre-Discovery

1 Document #0053). The written report only makes reference to oil and diesel and Total
2 Petroleum Hydrocarbons, but does not mention that there were measurable quantities of Copper,
3 Lead, and Zinc, which appear in the laboratory sample summary. In a later letter of December
4 6, 2006, regarding the same Sample Summary for UAD for September 11, 2006, revised
5 November 22, 2006, from Fredrick Martin (UAD Pre-Discovery Document #0056, #0057, and
6 #0058), the written report refers to samples 2,3,6 (shop area), and samples 4,5 (Ackerman
7 Creek), and discusses "significant contamination" of motor oil and diesel oil in the shop area,
8 and again omits any discussion of the fact that the revised Sample Summary of November 22,
9 2006 also indicated measurable levels of Lead, Copper, and Zinc.
10

11 4. Mr. Hunt's statement that "NEST Environmental Services provided the Regional board
12 with a number of soil tests, which in my understanding, produced lower than expected levels of
13 contamination," is false and misleading based on the foregoing facts and the fact that on March
14 12, 2007, Alpha Analytical Laboratories, Inc. (UAD Pre-discovery Document #0005 and #0006)
15 reported measurable levels of the following hazardous chemicals in micrograms per liter:
16 Toluene, 1.0 ug/liter; Ethylbenzene, .64 ug/liter; and Xylene, 4.0 ug/liter. Further to this pattern
17 of down-playing and understatement, NEST Environmental Services issued a report on October
18 11, 2007 (see attached exhibit 1.) to the North Coast Regional Water Quality control Board,
19 attention Mr. Richard Azevedo, wherein nine (9) samples were taken. The written report
20 discusses the lack of presence of BTEX and MTBE and mentions values of Total Petroleum
21 Hydrocarbons (TPH). The last paragraph of the report states, "Considering that the levels of
22 contamination in this soil are generally in line with our experience with other auto dismantlers
23 and that the DI Wet analysis shows little or no potential for affecting the local ground water, I
24 believe that paving this area would be entirely appropriate. We seek your approval for paving, if
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1 you have any questions please call me.” This written report omits the fact that in the
2 SUMMARY OF TEST RESULTS ON SOIL SAMPLES TAKEN “UNDER” THE PAVED
3 AREA, September 2007 (see Exhibit 1. Attached) nine (9) of the samples indicated significant
4 levels of lead, while TPH levels ranged from 77 to 2400. Samples G1 through G9 for Lead in
5 milligrams per kilogram were 99, 620, 140, 65, 130, 730, 47, 42, and 31, respectively. The
6 California Department of Toxic Substance Control, DTSC, according to Mr. Azevedo of the
7 Regional Water Quality Control Board, has recently considered lowering the MCL (Maximum
8 Contamination Level to a range of 350-500 due to increasing knowledge about the health hazards
9 of Lead. This is also noted in Richard Azevedo’s hand-written notes on the report in Exhibit 1.
10 This would hardly qualify as “little or no potential for affecting local ground water”.
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13 5. Further to the above, the following is what Mr. Richard Azevedo stated in his testimony
14 given in deposition on March 13, 2008, page 165, lines 20-25, and page 166, lines 1-9 with
15 respect to Lead concentrations found in analytical results: “We probably - - I’m going to have to
16 review the whole file, but we probably directed them to take lead samples because of the
17 dismantling activities and the batteries on site. Lead’s a known problem, and they did sample for
18 Lead. We found varying concentrations across the site. Several samples were high enough to
19 raise the concern whether that concentration should be left in surface soils with a potential of
20 Lead attached to soil particulate moving into the storm water and being carried off-site on to
21 residential property.” Exhibit 1, attached, includes a table of values for the test results titled,
22 “SUMMARY OF TEST RESULTS ON SOIL SAMPLES TAKEN “UNDER” THE PAVED
23 AREA, September 2007” that also contains hand-written notes by Mr. Richard Azevedo of the
24 Regional Water Quality Control Board, which included the following statements: “Elevated MO
25 (motor oil) & Diesel may create local problem w/ground water;” Lead & MO attached to
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1 particulate moving in SW will be primary issue; Receptor are residential next door". There were
2 also two particular values for Lead that were circled on the table of values for Lead. They were
3 "620" and "730" milligrams/kg. In Mr. Azevedo's testimony given in deposition on March 13,
4 2008, he further stated on page 182, lines 7-9, "There were several samples that were above what
5 you would consider acceptable for residential screening".
6

7 6. In rebuttal to Mr. Hunt's statement that, "I permitted access to the facility by the
8 Mendocino county Hazmat Inspector and showed him the two collection ponds which had been
9 built at the Northeast corner of the auto dismantling facility," and "During that event I did show
10 to the County of Mendocino Hazmat Inspector that there was storm water being diverted from
11 the Pinoleville Pomo Nation Property to the immediate west of my property, onto my Property,"
12 is the following: Neither the Hazmat Inspector for Mendocino County, nor the person who
13 designed and oversaw the construction of the collection ponds is a geological or civil engineer,
14 licensed by the California State Licensing Board, as required by the Abatement Order issued by
15 the Regional Water Quality Control Board. Further, there is no record in the Hazmat Inspector's
16 report that we are aware of that states with specificity where, or if any, or in fact that, any storm
17 water was being diverted from the Pinoleville Pomo Nation Property, or any other specific
18 property or parcel.
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21 7. Mr. Hunt's statement that, "In compliance with the requirement that pollutants be removed
22 from storm water prior to discharge from the facility, NEST Environmental Services designed
23 and I constructed two collection facilities at the Northeasterly corner of the processing facility
24 (not the Northeastern corner of the Property)," is false and misleading. Mr. Fredrick Martin of
25 NEST Environmental Services is not a licensed geological or civil engineer, licensed and
26 registered by the State of California Licensing Board, and as such, his submittals to the Regional
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1 Water Quality Control board, and his oversight of the design and construction of these
2 containment ponds is not in compliance with the Abatement Order. Mr. Azevedo has also stated
3 in testimony during deposition that he is not in agreement with the design or location of the
4 settlement ponds and that UAD chose a location contrary to his recommendation. He stated in
5 his deposition of February 26, 2008 (page 93, lines 1-9) that, "When we originally looked at the
6 facility, they had this existing, call it tire pit, and it seemed possible that they could route runoff
7 from the work area over to that without construction a lot of excess improvements. They've
8 chosen to move in a different direction. They're going to route -- the current plan from UAD is
9 to direct the runoff to the east instead of the west and then back towards the percolation pit rather
10 than using the tire pit." Further, Mr. Azevedo believes the design to be technically unsound with
11 respect to the lack of lining contained in the ponds and Mr. Martin's statements and theories
12 regarding particle entrainment and whether the soil particles are sufficient to keep contaminants
13 out of ground water. Mr. Azevedo also stated during testimony that he does not believe any of
14 the contamination found on the UAD site is the result of groundwater flowing from the
15 reservation onto the UAD site. In Mr. Azevedo's testimony in deposition dated March 13, 2008,
16 page 266, lines 5-7,

17 Q: "Have you ever seen any oil from any properties running on to Hunt's property?"

18 A: "No."

19 8. Mr. Hunt's statement, "The ponds were capturing all of the storm water discharge from the
20 auto dismantling facility and preventing the discharge of any storm water from the facility, even
21 at the height of the storm. In essence, the collection ponds were operating at a higher level than
22 that required by the CAO," is misleading because it omits the fact that hydrocarbons have been
23 found in the collection ponds and present a hazard to groundwater. In Mr. Azevedo's testimony
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1 given in deposition on February 26, 2008, page 103, lines 11-25, and page 104, lines 1-5, "And
2 when you say it was in the new retention pond, UAD created a pond in the back, and the idea
3 there was originally to try to minimize some runoff that was going on to the tribal property. So
4 they came up with an idea that we thought was reasonable that they could put in retention ponds
5 on-site along the levy that would capture a lot of runoff and hold runoff on-site where it would
6 then percolate in rather than being discharged, so that basically what that means is, in that new
7 pond, they're finding hydrocarbons in that pond. Q.: With regard to finding hydrocarbons in that
8 pond, was that status violative of any applicable statute or regulation that you're (Mr. Azevedo)
9 charged with? A.: Yes, it's something we would look at in terms of our basin plan and in terms
10 of Puerto Colon (protocol) (phonetic). Imagine, if you will, a pond that is in soil above a water
11 table and it has pollutants in it. As this material soaks into the ground, where do those pollutants
12 go? They're going to move into the groundwater."

15 9. Mr. Hunt's statement, "I have retained the McEdwards Group to work with NEST
16 Environmental Services in amending the SWPP to the satisfaction of the Regional Board," is
17 misleading in that we have received no records or information in discovery that McEdwards
18 Group has ever performed work for Ukiah Auto Dismantlers or Mr. Hunt. If this is a very recent
19 development, then the fact of the recent hiring of McEdwards Group is a further indication of
20 Regional Water Quality Control Board's dissatisfaction with the quality of the Storm Water
21 Pollution Prevention Plan (SWPP).
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24 10. In rebuttal to Mr. Hunt's statement that, "I am informed and believe that the upgradient
25 Pinoleville Pomo Nation Property is a former industrial site having been operated as a sawmill
26 for many years up until the early 1970s," fails to make any connection with a sawmill operation
27 or establish any basis in fact with regard to the high concentrations of Lead, Copper, Zinc,
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1 Mercury, Ethylbenzene, Toluene, Xylene, and TPH, as diesel and motor oil found on his
2 property, and the heavy metals discovered flowing onto Tribal Lands, and into the Ackerman
3 Creek. On the contrary, as Mr. Azevedo stated in his testimony, "We probably directed them to
4 take lead samples because of the dismantling activities and the batteries on site. Lead's a known
5 problem, and they did sample for lead."
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7 **I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE**
8 **UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.**
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10 DATED: JUNE 19 2008
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12 Ukiah California
13

/S/ George O. Provencher
George O. Provencher
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NEST Environmental Services

1040 Grant Road, Suite 155, PMB 325, Mountain View, California 94040-3296

October 11, 2007

North Coast Regional Water Quality Control Board
5550 Skyline Boulevard, Suite A
Santa Rosa, CA 95403

Attn.: Mr. Richard Azevedo

Dear Mr. Azevedo:

We have completed testing of nine samples of soil to be covered with pavement. The attached drawing shows the locations of the samples. In preparing the area for paving, the contractor moved and compacted about 30 to 35 cubic yards of soils from the low end of the grade (samples 5, 3, & 9) to the high end of the grade (samples 1 & 2). The soil comprises graded river stones varying in size from pebbles to four or five inches with sandy clay for fines. It proved to be a very hard surface for collecting soil samples.

We were obliged to take two soil samples on those labeled G1&P through G2&P because the first sample had insufficient soil to complete all of the tests. G9 was an additional sample I took for completeness. I have also characterized the soil samples according to their approximate level with respect to the grade level, and the hardness of the soil at each location. Some sample points were quite difficult to scrape out enough soil to fill the sample jar and some were somewhat loose. The grade levels varied from about six inches above grade to 18 inches below grade. To clarify the notation, samples G1-G8 were analyzed for the metals and gasoline; samples G1P-G8P were analyzed for oil and diesel. G9 was analyzed for the complete set of potential contaminants.

Calling your attention to the summary chart of the analysis done on each of the samples you can see that the results of the Wet DI analysis are Non-Detect for all samples except G2 which lists some zinc in the leachate. Especially, there was no evidence for the presence of BTEX & MTBE. The values of TPH for gasoline represent the heavier hydrocarbons and could be an overlap with motor oils.

Regarding the motor oil and diesel results the higher values are on the surface, whereas the levels drop significantly as the grade level decreases. There was no visible staining or odor in the samples. Also, one notes a rather strong correlation between the diesel and motor oil suggesting that the diesel levels are overlapping the motor oil.

Considering that the levels of contamination in this soil are generally in line with our experience with other auto dismantlers and that the DI Wet analysis shows little to no potential for affecting the local ground water, I believe that paving this area would be entirely appropriate. We seek your approval for paving, if you have any questions please call me.

Sincerely yours,



Frederick Martin, MS, REA-I 04775
Founder and Principal
Phone 707 895 2607

Encl.: Pavement Drawing
Summary Table
Cc: Wayne Hunt
Rick Mayfield
Christopher Neary, Attorney

SUMMARY OF TEST RESULTS ON SOIL SAMPLES TAKEN "UNDER" THE PAVED AREA, September 2007														
EPA methods	all values in ppm or mg/l													
	9045B	6010	6010	5010	6010	8260GRO	8260B	8260B	8260B	8260B	8260B	8260B	8260B	8260B
	PQL	10	0.1	5	0.1	10	0.1	1	0.005	15-25				
sample grade	condition	pH	Cu	Pb	Zn	Gasoline	BTEX/MTBE	Motor Oil	Diesel					
inches			Total	Total	Total	TPH	DI	TPH	DI	TPH	DI			
G1&P	6: hard	7.6	61 ND	99 ND	160 ND	4.7 ND	ND	760	0.17	140	0.053			
G2&P	4: hard	7.4	74 ND	620 ND	230 0.2	1.6 ND	ND	890	0.21	150 ND				
G3&P	0: loose	7.7	63 ND	140 ND	190 ND	54 ND	ND	2400	0.48	470	0.12			
G4&P	0: medium	7.9	54 ND	65 ND	130 ND	3.2 ND	ND	2400	0.56	310	0.11			
G5&P	-12: loose	7.8	86 ND	130 ND	250 ND	3 ND	ND	640	0.12	270	0.085			
G6&P	0: loose	8	740 ND	730 ND	280 ND	1.5 ND	ND	2300	0.93	370	0.21			
G7&P	-8: medium	7.6	30 ND	47 ND	150 ND	82 ND	ND	170 ND		23 ND				
G8&P	-4: very hard	8.2	33 ND	42 ND	43 ND	250 ND	ND	330	0.1	35 ND				
G9P	-18: very loose	6.8	38 ND	31 ND	77 ND	1.6 ND	ND	77	0.13	12 ND				

- GRADE REFERS TO DEPTH OF FILL ABOVE NATURAL grade or depth of cut Below grade
- CALLED ON OCT 15 for vol info. (Fred Martin)
 (He says more soil work may be too costly for Wayne Hunt)

TTLc for Lead → 1000 mg/Kg
 - proposed new standard 350-500 mg/Kg

- Copper/Zinc within limits

- Gas, BTK not an issue

- Elevated mo + diesel may create local problem w/ groundwater
 lead + Mo attached to particulate moving in SW well be primary issue -
 - Recycle one residential next door
 D. J.

10/11/2007 14:18

7078959

FREDERICK MARTIN

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